

MEMPHIS DOWNTOWN:
One Commerce Square, Ste 2000
Memphis, Tennessee 38103
telephone: (901) 259-7100
facsimile: (901) 259-7150

Charles B. Welch, Jr.
cbwelch@farris-law.com

**FARRIS MATHEWS BRANAN
BOBANGO & HELLEN, PLLC**

ATTORNEYS AT LAW

HISTORIC CASTNER KNOTT BUILDING
618 CHURCH STREET, SUITE 300
NASHVILLE, TENNESSEE 37219-2436

(615) 726-1200 Telephone
(615) 726-1776 Facsimile

MEMPHIS EAST:
530 Oak Court Drive, Ste. 345
Memphis, Tennessee 38117
telephone: (901) 762-0530
facsimile: (901) 683-2553

Writer's Direct Dial:
(615) 687-4230

REC'D TN
REGULATORY AUTH
MAR 2 PM 1 51
OFFICE OF THE
EXECUTIVE SECRETARY

March 2, 2001

VIA HAND DELIVERY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

**Re: Amendment to the Application of Memphis Network, LLC for
a Certificate of Public Convenience and Necessity to Provide
Intrastate Telecommunications Services and Joint Petition of
Memphis Light, Gas and Water Division, a Division of the
City of Memphis, Tennessee ("MLGW") and A&L Networks -
Tennessee, LLC ("A&L") for Approval of Agreement Between
MLGW and A&L Regarding Joint Ownership of
Memphis Network, LLC
Docket No. 99-00909**

Dear Mr. Waddell:

Enclosed for filing please find the original and thirteen (13) copies of Tennessee Cable Telecommunications Association, Time Warner Communications of the Mid-South, and Time Warner Telecom of the Mid-South, LLP's Response to Applicant's and Joint Petitioners' Motion to Quash Subpoenas Duces Tecum of and Motion for Order that Discovery Depositions not be had and Objection to Taking of Depositions Due to Errors and Irregularities in the above-referenced docket. Copies are being served on parties of record.

If you have any questions, please contact me.

Very truly yours,

**FARRIS MATHEWS BRANAN
BOBANGO & HELLEN PLC**

Charles B. Welch, Jr.
Charles B. Welch, Jr.

CBW:lw

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)	
NETWORK, LLC FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND)	
NECESSITY TO PROVIDE INTRASTATE)	
TELECOMMUNICATIONS SERVICES)	
AND JOINT PETITION OF MEMPHIS)	DOCKET NO. 99-00909
LIGHT GAS AND WATER DIVISION,)	
A DIVISION OF THE CITY OF MEMPHIS,)	
TENNESSEE ("MLGW") AND A&L)	
NETWORKS-TENNESSEE, LLC ("A&L"))	
FOR APPROVAL OF AGREEMENT BETWEEN)	
MLGW AND A&L REGARDING JOINT)	
OWNERSHIP OF MEMPHIS, NETWORK, LLC.)	

**RESPONSE TO APPLICANT'S AND JOINT PETITIONERS'
MOTION TO QUASH SUBPOENAS DUCES TECUM OF
ANDREW P. SEAMONS, LARRY THOMPSON, ALEX LOWE,
AND WARD HUDDLESTON AND MOTION FOR ORDER
THAT DISCOVERY DEPOSITIONS NOT BE HAD AND OBJECTION
TO TAKING OF DEPOSITIONS DUE TO ERRORS AND IRREGULARITIES**

COME NOW Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom"), Time Warner Communications of the Mid-South ("Time Warner Communications") and the Tennessee Cable Telecommunications Association ("TCTA") (collectively "the Intervenor") and respond to the Motion to Quash Subpoenas Duces Tecum of Andrew P. Seamons, Larry Thompson, Alex Lowe, and Ward Huddleston and Motion for Order that Discovery Depositions Not Be Had and Objection to Taking of Depositions Due to Errors and Irregularities. For the reasons set forth below, the Intervenor request that the Tennessee Regulatory Authority ("TRA") deny Applicant and Joint Petitioners' Motion to Quash.

RELEVANT FACTS

On January 29, 2001, a pre-hearing conference was held during which the Pre-Hearing Officer established a schedule for filings and discovery. By Order dated February 9, 2001, the Pre-Hearing Officer determined that additional discovery would be necessary and called for the completion of discovery would be necessary and called for the completion of discovery and the submission of pre-filed rebuttal testimony by the Intervenor no later than March 1, 2001. On February 5, 2001, the Intervenor timely served Data Requests upon Applicant and Joint Petitioners. On February 12, 2001, Applicant and Joint Petitioners responded to these Data Requests, objecting to each and every Request and providing no documentation. On February 15, 2001, the Intervenor filed a Motion to Compel responses to the Data Requests. The Pre-Hearing Officer issued an Order on February 16, 2001 requiring the parties to supplement both the objections to the Data Requests and Motion to Compel. The parties submitted these filings on February 21, 2001 pursuant to the Order.

On February 23, 2001, the Intervenor requested the issuance of subpoenas duces tecum for the depositions of Ward Huddleston, Larry Thompson, Andrew P. Seamons and Alex Lowe, to take place on February 28, 2001. These subpoenas were issued by the Pre-Hearing Officer pursuant to the ruling at the January 29, 2001 pre-hearing conference that depositions would be permitted as part of discovery. On February 26, 2001, Applicant and Joint Petitioners filed this Motion to Quash. In an Order dated February 26, 2001, the Pre-Hearing Officer determined that an undue hardship and burden would be placed on Applicant and Joint Petitioners if the depositions proceeded on February 28, 2001 and cancelled the depositions for that

date. The Pre-Hearing Officer held the Motion to Quash in abeyance until a determination has been made regarding objections to Data Requests filed by Applicant and Joint Petitioners and the Motion to Compel filed by the Intervenors.

ARGUMENT

1. Applicant and Joint Petitioners' Arguments Regarding the Timing of the Subpoenas are No longer Before the TRA.

Applicant and Joint Petitioners argue that they were not given proper notice of the depositions. The bulk of Applicant and Joint Petitioners' arguments in the Motion to Quash address alleged defects in notice and service of the subpoenas. The Intervenors initially point out that the Pre-Hearing Officer issued the subpoenas on February 23, 2001 for the depositions of February 28, 2001. As of now, arguments regarding the timing and notice given regarding these subpoenas are no longer relevant as the Pre-Hearing Officer has cancelled the depositions for February 28, 2001, holding in abeyance whether the subpoenas should be quashed for other reasons. Issues of the notice to be given to Applicant and Joint Petitioners are not relevant because the Pre-Hearing Officer set the discovery schedule by the February 9, 2001 Order. Applicant and Joint Petitioners should not have been surprised by requests for depositions prior to March 1, 2001 as this was the close of the expedited discovery schedule set by the Pre-Hearing Officer.

2. The Intervenors are not in Violation of the Rules of the TRA.

Applicant and Joint Petitioners argue that the use of subpoenas is meant to circumvent the provisions of Rule 1220-1-2-.11 of the TRA because the Intervenors have sought the same information by their Data Requests. Rule 1220-1-2-.11 address

the computation of time for discovery and responses. As stated above, Applicant and Joint Petitioners' arguments regarding the timing of the issuance of subpoenas is no longer relevant. The depositions were cancelled for February 28, 2001, so Applicant and Joint Petitioners' prolonged discussions of calculation of timing has been rendered moot.

The Intervenor's are not attempting to circumvent the TRA's discovery rules and Applicant and Joint Petitioners' argument makes no sense in light of the Pre-Hearing Officer's February 9, 2001 Order. In this Order, the Pre-Hearing Officer determined that additional discovery was necessary as a result of the filing of the Amended Application and additional pre-filed testimony. The Pre-Hearing Officer specifically determined that "depositions would be permitted" in this matter. Applicant and Joint Petitioners' extended argument that the Intervenor's are trying to circumvent the TRA's discovery provisions is meritless based on the Order specifically authorizing such depositions. Again, the Pre-Hearing Officer issued the subpoenas on February 23, 2001. If he had understood the Intervenor's as reaching beyond the TRA's rules in seeking to depose these individuals, he would not have issued the subpoenas on that date.

3. The Intervenor's are not in Violation of Rule 26 of the Tennessee Rules of Civil Procedure.

Applicant and Joint Petitioners argue that the subpoenas should be quashed pursuant to Rule 26.03(1) of the Tennessee Rules of Civil Procedure because the Intervenor's had "ample opportunity" to obtain the information sought and could have contacted Applicant and Joint Petitioners any time from February 15, 2001 to February 23, 2001 to seek agreement for a deposition date. The Intervenor's "ample opportunity"

concluded on March 1, 2001 and they were perfectly within the parameters of the law and the TRA's discovery schedule in seeking to depose Applicant and Joint Petitioners' witnesses before this date.

Applicant and Joint Petitioners argue that the subpoenas should be quashed pursuant to Rule 26.03(1) of the Tennessee Rules of Civil Procedure because they constitute discovery which is "unreasonably cumulative or duplicative." Applicant and Joint Petitioners cannot know whether information solicited by the Intervenor at deposition will be cumulative or duplicative. It surely will not be cumulative as Applicant and Joint Petitioners have provided very little documentation or answers to Data Requests under the discovery schedule. The information sought is clearly relevant for all of the reasons set forth in the Intervenor's Motion to Compel and Supplement to Motion to Compel. The depositions are authorized by direct Order of the TRA. Since Applicant and Joint Petitioners absolutely refused to fully answer any of the Data Requests or provide relevant documentation served upon them without objection, the Intervenor sought additional discovery methods, as allowed by the Rules of Civil Procedure, the rules of the TRA and the Pre-Hearing Officer's February 9, 2001 Order, to obtain relevant information prior to the expiration of the discovery deadline. This information is not duplicative of earlier Data Requests because the Intervenor seeks to depose witnesses to elicit testimonial responses. Tennessee courts have consistently held that statutes authorizing discovery should be given broad and liberal construction in favor of disclosure of non-privileged material. See State ex rel. Pack v. West Tennessee Distributing Co., 430 S.W.2d 355 (Tenn. App. 1968); Harrison v. Greeneville

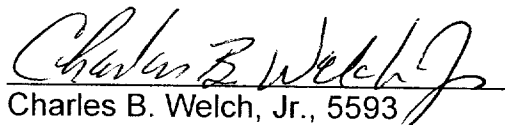
Ready-Mix, Inc., 417 S.W.2d 48 (Tenn. 1967); Vythoukas v. Vanderbilt Univ. Hosp., 693 S.W.2d 350 (Tenn. App. 1985).

CONCLUSION

For these reasons, the Intervenor respectfully request that the TRA deny in whole Applicant and Joint Petitioners' Motion to Quash Subpoenas Duces Tecum of Andrew P. Seamons, Larry Thompson, Alex Lowe, and Ward Huddleston and Motion for Order that Discovery Depositions Not be Had and Objection to Taking of Depositions Due to Errors and Irregularities.

Respectfully submitted,

**FARRIS MATHEWS BRANAN
BOBANGO & HELLEN PLC**

By: 
Charles B. Welch, Jr., 5593
Steven C. Brammer, 15785
Attorneys for Tennessee Cable
Telecommunications Assoc., Time
Warner Communications, Inc. and
Time Warner Telecom of the Mid-
South, L.P.
618 Church Street, Suite 300
Nashville, Tennessee 37219
(615) 726-1200

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the parties listed below by placing same in U.S. Mail, postage prepaid, this the 2nd day of March, 2001.

Henry Walker, Esq.
Boult, Cummings, et al.
414 Union Avenue, Suite 1600
P.O. Box 198602
Nashville, Tennessee 37201-8062

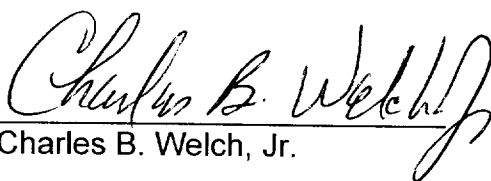
D. Billye Sanders, Esq.
Waller Lansden, et al.
511 Union Street, Suite 2100
P.O. Box 198966
Nashville, Tennessee 37219-8966

Vance Broemel, Esq.
Office of the Attorney General
Consumer Advocate Division
Cordell Hull Bldg.
425 5th Avenue North
Nashville, TN 37243-0500

R. Dale Grimes, Esq.
Bass, Berry & Sims
2700 First American Center
Nashville, TN 37238

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-8062

John Knox Walkup, Esq.
Wyatt Tarrant & Combs
2525 West End Ave., Suite 1500
Nashville, Tennessee 37219


Charles B. Welch, Jr.

G:\DATA\JMF\TIME\NETWORK\QUASH.RES